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MAR 29 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 26  
of the Cable Television Consumer  
Protection and Competition Act of 1992  
Inquiry into Sports Programming Migration

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)  
) PP Docket No. 93-21  
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)

COMMENTS OF  
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

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March 29, 1993

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## SUMMARY

The National Collegiate Athletic Association ("NCAA") welcomes the opportunity to assist the Commission in gathering information concerning the "migration" of sports programming.

We support the Commission's decisions to focus on two college sports, basketball and football, and to focus on the period from 1980 to 1993. We further agree that the Commission should focus more on numbers of games than on audience ratings.

It is important to understand that non-economic considerations weigh heavily in educational institutions' decisions regarding telecasting of college sports. Often, the primary concern is not with telecasting revenues, but with the publicity that results from media carriage of sports events.

The NCAA is more familiar with what the Notice calls "reverse migration" than with "migration" of sports programming. As a consequence of a contract between the NCAA and CBS, applicable to the years 1991 through 1997, increased numbers of early-round games of the NCAA Final Four® Championship now appear on "free" TV. This arrangement was negotiated specifically because of the strong desire of NCAA and its member institutions to increase public access to telecasts of this tournament and other NCAA men's and women's championship events, most notably the Women's Final Four.

The NCAA also has a supplemental contract with ESPN for the telecasting via cable of all or a portion of ten NCAA

championships during the same period covered by the CBS contract. This contract encompasses events from five women's championships. The net result of these two contracts is vastly greater exposure than was previously available for a wide variety of men's and women's intercollegiate championship events.

The NCAA has no involvement in contracts for the telecasting of in-season basketball and football games nor for most post-season football games. Information about these contracts is most available from individual institutions, conferences, and other institutional consortia.

On issues of consumer welfare, a few generalized observations can be made. First, it is certain that the availability of college sports programming has increased over the time period being studied by the Commission. Second, although certain college sports events are now available only on cable sports networks, there remains a very substantial quantity of college sports programming on "free" broadcast television. Third, subscription media have made it possible for viewers to see sports programming they otherwise would not have had the opportunity to see; ESPN and other services are supplementing broadcast coverage of college sports more than they are supplanting it. Thus, the public appears to be better served by the current mix of sports programming on broadcast and subscription services than it was when only the former were available.

The NCAA's contracts with CBS and ESPN contain no "preclusive" provisions.

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COMMENTS OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

The National Collegiate Athletic Association ("NCAA") hereby responds to the Commission's Notice of Inquiry concerning the "migration" of sports programming. The Notice solicits information for use in the Commission's study on the carriage of sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study will serve as the basis for an interim report to be submitted to Congress by July 1, 1993, with a final report to follow a year later, as required by Section 26 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act").<sup>1</sup> The NCAA welcomes the opportunity to assist the Commission in gathering the information it needs for the interim report.

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<sup>1</sup>/ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

## I. INTRODUCTION OF NCAA AND STATEMENT OF INTEREST

The NCAA is a nonprofit unincorporated association of over 1000 four-year colleges and universities and related conferences and organizations engaged in the promotion and regulation of intercollegiate athletics. This year, the NCAA is sponsoring 79 national championships for men and women in 21 different sports.

the deadline for the interim report and the Commission's many other responsibilities under the Cable Act. Given the relative degrees of consumer interest in access to telecasts for these and other sports, we see no need for the Commission to expand its inquiry beyond the sports identified in the Notice.

The Commission has tentatively decided to focus its study on the period from 1980 to 1993. Notice at ¶ 6. We have no basis for suggesting that this time period be expanded or contracted. In one sense, however, 1984 represents a turning point in the telecasting of college athletics; since that time, as a result of a Supreme Court decision, the NCAA has not engaged in the sale of telecasting rights to any intercollegiate contests other than its own championships.<sup>3</sup> Thus, the NCAA's principal activities of interest in this proceeding involve basketball championships, most notably the Division I Men's Basketball Championship (commonly known as the "NCAA Final Four®"<sup>4</sup>

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<sup>3/</sup> Prior to 1984, for many years, the NCAA administered a football television plan for the telecasting of in-season football games among its members. The Supreme Court ruled that this program violated federal antitrust laws. National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma, 468 U.S. 85 (1984). As a consequence, television rights to in-season intercollegiate athletic events are now marketed by individual institutions, conferences, and other consortia of institutions. Moreover, post-season Division I-A football contests (although certified by the NCAA as conforming to its standards for such events) are marketed by the bowl committees themselves, not by the NCAA.

<sup>4/</sup> Final Four® is a registered service mark of the NCAA.



Tournament), as well as football championships in certain NCAA Divisions.

B. Measuring Sports Programming Migration

The Notice seeks comments on the best way to measure migration of sports programming. We agree with the Commission's tentative proposal (Notice at ¶ 8) to focus on numbers of games and not to attempt to measure migration by audience ratings or by some other method. Ratings are not particularly useful in the present context because of the significant extent to which sports programming is viewed in settings other than the home.

C. Evaluating Changes in Video Distribution of Sports Programming

Another preliminary portion of the Notice seeks to develop an analytical framework to evaluate changes in the exhibition of sports programming. Notice at ¶ 9. In this context, the Commission seeks comment on the assumption that "the relevant sports leagues, teams, universities, and conferences desire to maximize their overall net revenues." Id. This assumption, in our view, is more directly applicable to the professional sports than to intercollegiate athletics.

Institutions of higher education surely benefit from the revenues associated with contracts for telecasting of their

events. These direct revenues, however, are by no means



primary concern is not with telecasting revenues, but with the publicity that results from media carriage of sports events.

Publicity can benefit colleges and universities in various ways. To the extent that increased publicity results in increased attention and loyalty from alumni, it may create indirect revenues, by increasing annual giving and testamentary bequests. No less important, publicity can also affect both the size and the quality of the student population, by making attendance at an institution more attractive. The extent of media exposure also affects an institution's ability to attract talented student-athletes, especially those with aspirations to participate in professional sports. These are the primary considerations which drive colleges and universities' efforts to secure media exposure for their sports teams.<sup>5</sup>

A further consideration with regard to the analytic framework is that many viewers of college sports are strongly influenced by alumni loyalties or other emotional ties. For these people, the quality of the event is not the primary attracting feature (though it may have some influence), nor is the aggregate availability of sports programming of much consequence. For a viewer with a special tie to one team or

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5/ We do not believe that telecasting decisions of educational institutions and related organizations are much influenced by "strategies for determining ticket prices, stadium concessions, and sales of licensed merchandise (jerseys, hats, etc.)." See Notice at ¶ 9.

conference, the principal concern is the availability of access to that particular team's events.

### III. VIDEO DISTRIBUTION OF SPORTS PROGRAMMING

Turning to the heart of the inquiry, the Commission seeks to quantify the extent of past migration of sports programming. Notice at ¶ 10. The most notable migration with which we are familiar is of the kind the Notice refers to as "reverse migration." See Notice at n.19. This occurred in the case of the contract negotiated between CBS and the NCAA and signed in November 1989, which applies to the years 1991 through 1997. Under this contract, all early-round games of the NCAA Final Four® Championship now appear on "free" TV via regional broadcasts by local affiliates of CBS. Previously, many of these games were telecast on ESPN, a cable sports network (though they were carried by over-the-air broadcasters in areas of particular interest).

This arrangement was negotiated specifically because of the strong desire of NCAA and its member institutions to increase the availability of these and other NCAA men's and women's championship events (discussed in greater detail below) to the public. At the time the contract was negotiated, there were significant areas of the country (including such cities as Washington, D.C.) which did not have access to cable. In addition, there were significant numbers of homes which, though passed by cable, were not connected to it.

The contract therefore was negotiated in a manner which ensured that all 63 men's NCAA Final Four® Tournament games are broadcast live on "free" TV.<sup>6</sup> So, too, are portions of the Division I women's basketball championship and the Division II men's basketball championship.<sup>7</sup> This represents a significant increase in the availability of "free" college championship basketball.<sup>8</sup>

The Notice seeks "specific data on college football and college basketball beginning in 1980." Notice at ¶ 18. Specifically, the Commission asks about "the schedule of games for the two sports, [including] the number of teams involved, the length of the regular season, the number of regular season games, the number of home games versus away games and the structure of postseason play." Notice at ¶ 19. Information on the telecasting of all of these games is also requested.

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<sup>6/</sup> This includes 32 first-round games, 16 second-round games, 8 third-round games, 4 regional championships, 2 Final Four® semi-finals, and the national championship game.

<sup>7/</sup> See discussion below at 10-11.

<sup>8/</sup> By contrast, through the period from 1980 to 1991, ESPN showed approximately 10 complete first-round games live, and about 10 complete first-round games on a tape-delayed basis.

We cannot provide detailed information regarding telecasting of in-season events by NCAA member institutions; as noted above, telecasting arrangements for those events are not made by the NCAA. We can, however, generally describe the structure of in-season and post-season play.

First, it may be helpful to explain that NCAA member institutions are classified in one of three Divisions: I, II, or III, which are subject to different rules, including rules regarding the numbers and amounts of athletic scholarships that may be awarded.<sup>9</sup> For purposes of football only, Division I institutions are further classified as Division I-A or Division I-AA. Division I institutions tend to be the largest, and their athletic teams tend to generate the strongest media interest.

In total, NCAA member institutions sponsor approximately 600 football teams, 800 men's basketball teams, and 800 women's basketball teams.<sup>10</sup> In the case of football, there are 107 Division I-A institutions, 88 Division I-AA institutions, 129 Division II institutions, and 229 Division III institutions. The corresponding numbers for 1980 were 139, 46, 110, and 191, respectively. In the case of basketball, there are currently 299 institutions in Division I, 220 in Division II, and 313 in

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<sup>9/</sup> Under certain circumstances, an institution may petition to have a certain sport or sports classified in a division other than the division in which the institution is otherwise classified.

<sup>10/</sup> There is no college women's football.

Division III. The corresponding numbers for the 1980-81 season were 261, 188, and 281.

The football schedule at NCAA member institutions typically includes 11 games held on Saturdays from early September through late November or early December. The basketball schedule in Divisions I and II currently includes a maximum of 27 games from early December through early March.<sup>11</sup> Division III institutions compete in up to 25 contests over the same period.

During regular season play, for both football and basketball, "home" and "away" games are divided evenly, except where required by special circumstances. For post-season NCAA championship events, neutral sites are ordinarily used for the final round of competition.

In the case of Division I-A football, post-season play currently consists of 18 bowl games. Five conferences and four bowls (together with one additional university) have established a coalition which coordinates invitations to certain of the bowls. The NCAA does not sponsor a Division I-A football championship.

In the case of Divisions I-AA, II, and III football, the NCAA sponsors national championships. Sixteen conference

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<sup>11/</sup> In past years, the number of in-season games has been as high as 31. The current number was adopted in the 1990-91 season.

champions in each Division participate in single-elimination tournaments.

In the case of Division I men's basketball, as already discussed, the NCAA administers a single-elimination tournament commonly known as the NCAA Final Four® Tournament. Thirty of the 64 berths in the tournament are reserved for conference champions<sup>12</sup> (for example, from the Atlantic Coast Conference, the PAC-10, the Big Ten); the rest are selected by invitation.<sup>13</sup> A comparable tournament, commonly known as the Women's Final Four,<sup>14</sup> is held for Division I women's basketball.<sup>15</sup> Participants in the Women's Final Four Tournament are selected on the same basis as in the men's tournament. In Divisions II and III, the NCAA also administers national basketball championships for men's and women's conference champions (as determined,

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<sup>12</sup>/ Many Division I conferences conduct a post-season conference championship tournament after the end of the regular season but before selections are made for the Final Four Tournament.

<sup>13</sup>/ There is one other major post-season men's basketball tournament, called the National Invitational Tournament, which involves 16 teams and also uses a single-elimination format.

<sup>14</sup>/ Federal trademark and service mark applications are currently pending for "Women's Final Four."

<sup>15</sup>/ This tournament currently involves 48 teams. Beginning with the 1993-94 season, participation will be expanded to 64 teams.

depending on the conference, either by regular season won-lost records or by end-of-season conference championships).<sup>16</sup>

The Notice seeks information "on the number of games exhibited locally, regionally and nationally on broadcast television, as well as on cable networks and as pay-per-view events." It also asks "which games were exhibited live and which were shown on a tape delay basis." And it inquires about "the number of games available for exhibition (i.e., for which rights had been sold) but not actually exhibited and on the number of games for which no video exhibition rights were sold." Notice at ¶ 19.

The NCAA's contract with CBS (discussed in greater detail below) centers on the NCAA Final Four® Tournament. All of the games of this tournament are broadcast live. In the first two rounds, as many as four games may be played simultaneously, so broadcast arrangements are made on a regional basis. Games in the subsequent rounds of the tournament are all broadcast nationwide. As previously noted, the final and semi-final games of the Division I women's basketball tournament are carried on CBS; the quarter-finals are telecast on ESPN. For the Division II men's basketball championship tournament, the final game is carried on CBS. For the Division II women's basketball

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<sup>16</sup>/ Thirty-two teams participate in the Division II men's, Division II women's, and Division III women's tournaments. Forty teams participate in the Division III men's tournament. All of these tournaments use a single-elimination format.



championship tournament, the final game is carried on ESPN. (Telecasting rights to earlier-round games in these tournaments are marketed by the NCAA, generally to local broadcasters.) The National Invitational Tournament, also mentioned above, is carried on ESPN.

In the case of football bowl games, the NCAA certifies the games as conforming to the conditions and rules established by the membership (relating to such matters as rules of play.

The Notice also asks about the extent to which telecasting rights are available but are not sold. We cannot quantify this with any precision, but it would tend to include most Division II and III contests.

The Notice next asks for information about audience ratings. Notice at ¶ 20. To the extent that this information is available, we assume that telecasters will supply it. As previously noted, however, we do not believe that audience ratings (which tend to measure viewing at home) are especially accurate in measuring viewing of sporting events (which are frequently watched in bars, dormitories, and other group settings). Another reason why audience ratings do not necessarily reflect consumer demand for access to particular events is that there may be events that people want to see but cannot receive because aggregate demand in a particular market is too small.<sup>18</sup>

The Notice also asks for information on telecasting "contract terms, including but not necessarily limited to, duration of contract, the number of games for which rights have been sold (which could be more than actually exhibited), exclusivity provisions, and rights fees." Notice at ¶ 21. In response to this inquiry, we advise that the principal NCAA

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<sup>18</sup>/ For example, there may be a small but intensely loyal group

contract of interest relating to collegiate athletics is the NCAA-CBS contract mentioned above. As has been widely reported in the press, this is a seven-year, \$1 billion contract. It covers all of the games of the men's Final Four® Tournament. It also covers the semi-final and final games of the Women's Final Four. In addition, it gives CBS rights to 14 other NCAA championship events such as swimming, diving, and gymnastics, including five which involve women's teams. The contract requires CBS to carry parts of all of these championships.

We also have a supplemental contract with ESPN for the telecasting via cable of all or a portion of ten NCAA championships during the same period covered by the CBS contract.<sup>19</sup> This contract encompasses events from five women's championships. The net result of these two contracts is vastly greater exposure than was previously available for a wide variety of intercollegiate championship events for men and women. We are particularly pleased that these contracts include a total of ten NCAA women's championships, which will ensure a vast improvement in both over-the-air and cable coverage for women student-athletes than in the past.<sup>20</sup>

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<sup>19/</sup> The events covered by the ESPN contract include earlier round contests in some of the same championships covered by the contract with CBS. For example, although the semi-finals and final games of the Division I women's basketball championship are carried on CBS, the quarter-final games are carried on ESPN.

<sup>20/</sup> Other provisions of the contract with CBS include a requirement that CBS provide the satellite capability  
(Footnote 20 continued on next page)

We have already responded above to the Commission's question regarding the objectives of colleges, college athletic conferences, and other organizations of colleges that market exhibition rights to college sports; our answer to ¶ 9 of the Notice also applies to the first half of ¶ 22. The latter paragraph also inquires about "the percentage of athletic department revenue generated by sale of broadcast or other media distribution rights and by gate receipts for football and basketball respectively." As it happens, this has been the subject of several detailed studies, the most recent of which covers a four-year period ending with fiscal year 1989.<sup>21</sup>

The primary conclusion to be drawn from an analysis of the report is that circumstances vary considerably from one institution to the next. Major differentiating characteristics include Division classification, status as a public or private institution, and sponsorship (or nonsponsorship) of a football program.<sup>22</sup> In aggregate terms, for Division I institutions with football programs, ticket sales in FY 1989 represented

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(Footnote 20 continued from previous page)  
necessary to transmit press conferences at the beginning of the tournament and before each game.

<sup>21/</sup> Raiborn, Mitchell H., "Revenues and Expenses of Intercollegiate Athletics Programs: Analysis of Financial Trends and Relationships, 1985-1989," published by the NCAA, 1990. A copy of the report describing this study will be placed in the public record of this docket.

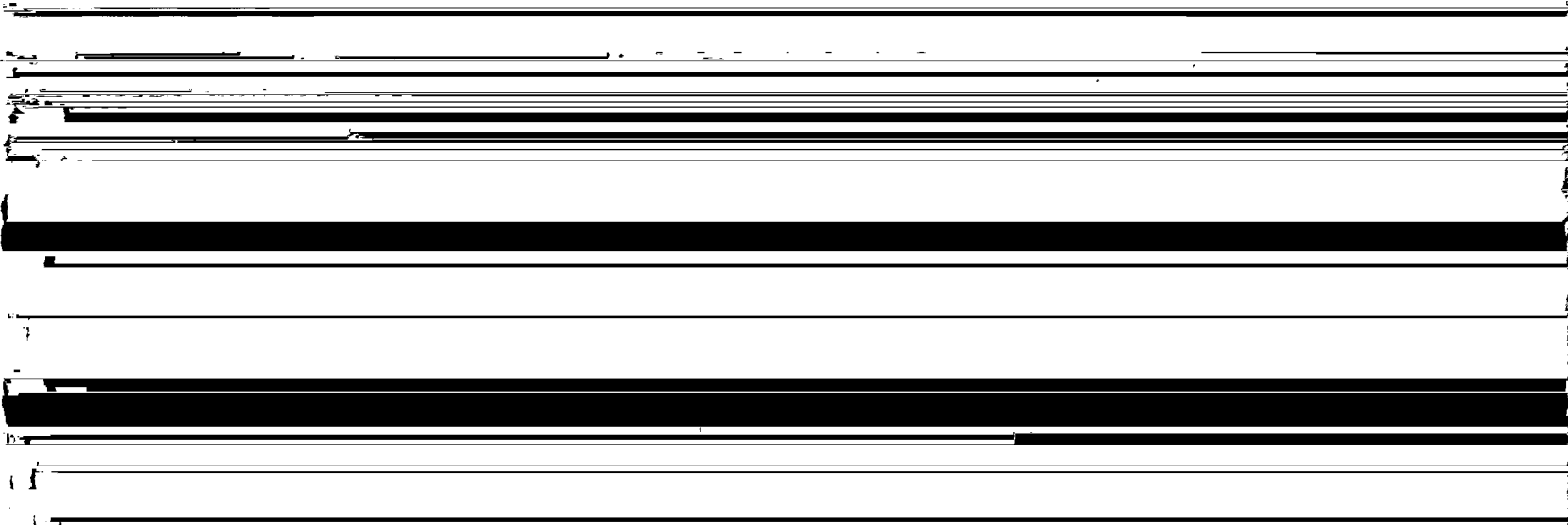
<sup>22/</sup> See id. at 11 (Table 2.2)(frequency distribution for total revenues).

approximately 35 percent of athletic department revenues; revenues from bowls, tournaments, and television represented 14 percent of athletic department revenues.<sup>23</sup> Television revenues represented an even smaller proportion of revenues for Division I institutions without football and institutions in Divisions I-AA, II and III.<sup>24</sup>

#### IV. CAUSES AND CONSEQUENCES OF SPORTS PROGRAMMING MIGRATION

##### A. Causes

The Notice poses several questions regarding economic causes of past and potential future sports programming migration. Notice at ¶ 23. The NCAA is not in a position to opine generally on changes in demand for broadcast sports programming, but we can say that national interest in the NCAA Final Four® Tournament strengthened markedly in 1979 and has remained strong ever since. Interest in certain teams -- and especially certain match-ups (such as Duke versus the University of Michigan) -- is keen. The sports audience has fragmented to some extent because of increased numbers of games on both broadcast and cable television and because of growing non-sports viewing alternatives. We can



offer no information concerning the extent to which the market for sports programming has adjusted to changes in the audience.

The Notice asks several questions about the effect of new technologies on sports programming migration. Notice at ¶ 24. As our answers above suggest, based on our information, collegiate athletic contests are not generally migrating from broadcast outlets to cable sports networks or to pay-per-view television. As we have already explained, educational institutions have substantial concerns other than maximizing their profits. Even if profits alone were the primary objective, there are inherent limitations on migration to subscription services. In particular, a significant reduction in the availability of high-quality collegiate athletic events on free TV would deny access to a significant number of viewers (not everyone can afford to subscribe to cable service). It could also alienate other viewers as well (there is a danger of jeopardizing team or conference loyalty if people begin to have to pay for what they are used to getting for free).

To answer several related questions, see Notice at ¶ 25, we believe that broadcast media exposure plays a substantial role in promoting interest in a team. This is most compellingly demonstrated in the case of a "Cinderella team," a relatively unknown institution that unexpectedly does well in an event such as the Final Four® Tournament (such as George Washington University in 1993). As for the relationship between broadcast

exposure and gate receipts, we believe there is some relationship, but gate receipts are more affected by the won-lost record a team is compiling. Of course, these factors are all interrelated; a winning record tends to attract increased attendance at sporting events, and a winning record also tends to increase broadcast exposure.

The role of superstations (Notice at ¶ 26) appears to be much more germane to professional than to collegiate athletics.

#### B. Consequences

The NCAA is not in a position to respond to most of the questions presented under this heading of the Notice (e.g., ¶¶ 28-29). We can, however, offer a few generalized but informed conclusions regarding consumer welfare (Notice at ¶ 30). First, it is certain that the availability of sports programming has increased over the time period being studied by the Commission. Second, although certain college sports events are now available only on cable sports networks, there remains a very substantial quantity of college sports programming on "free" broadcast television. Third, subscription media have made it possible for viewers to see sports programming they otherwise would not have had the opportunity to see; ESPN and other services are supplementing broadcast sports programming more than they are supplanting it.

In sum, the public appears to be better served by the current mix of sports programming on broadcast and subscription services than it was when only the former were available.

V. PRECLUSIVE CONTRACTS

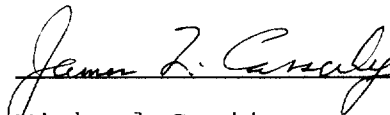
Finally, the Commission asks several questions about "preclusive contracts between college athletic conferences and video programming vendors." Notice at ¶¶ 31-34. The NCAA's contracts with CBS and ESPN contain no "preclusive" provisions.

VI. CONCLUSION

We hope the foregoing information is helpful to the Commission in meeting its responsibilities under Section 26 of the Cable Act. We stand ready to provide additional information that may be required.

Respectfully submitted,

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